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ABSTRACT

This booklet helps institutions understand the restoration of Title IX of the Education Amendments of 1972 and changes resulting from the Civil Rights Restoration Act. Title IX prohibits sex discrimination in federally assisted education programs. A 1984 ruling held that Title IX covers only programs or activities funded with federal money. In March 1988, the Civil Rights Restoration Act ensured that Title IX applies to the entire institution regardless of where federal funds are used. Sections focus on the following: which institutions are covered; exemptions (admissions, military school, and religious); affirmative remedial action; discrimination; how to treat students (admissions, recruitment, housing/facilities, courses, educational activities, counseling, financial aid, employment aid, health and insurance benefits, abortion, marital or prenatal status, athletics, textbooks and curricular materials, sexual and peer harassment, and sexual assault, abuse, and rape); how to treat employees (recruitment, compensation, job classification, fringe benefits, marital/prenatal status, pregnancy, and pre-employment inquiries); a list of actions for institutions to take (i.e. assuring the government they are complying with Title IX requirements and adopting and publishing grievance procedures); and single-sex organizations/programs (groups whose membership practices are exempt, programs operated by educational institutions, and programs not operated by educational institutions but receiving significant assistance from recipients of federal funds). An appendix discusses Title IX and athletics. (SM)

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The Restoration of Title IX
Implications for Higher Education

Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally assisted education programs.[1] Following its passage, the law had been interpreted by the federal government to cover all activities and programs of education institutions receiving federal funds, and all education programs of institutions whose primary mission is not education. In 1984, however, the United States Supreme Court ruled in *Grove City College v. Bell* that Title IX was restricted to cover only those specific programs or activities funded with federal money.[2] As a result, discrimination in many programs and activities was no longer prohibited by Title IX because the programs and activities did not receive direct federal funds. On March 22, 1988, Congress enacted the Civil Rights Restoration Act of 1987 over President Reagan's veto.[3] This act overturned the Supreme Court's earlier decision and restored Title IX coverage so that once again it applies to the entire institution regardless of where federal funds are utilized.[4]

This booklet, in part updated from PSEW[5] and other materials, is designed to help institutions understand the restoration of Title IX[6] and changes resulting from the Civil Rights Restoration Act.

Summary[7]

Title IX of the Education Amendments of 1972 states:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.[8]

The act covers virtually all areas within institutions such as recruiting, admissions, counseling, financial aid, health care, insurance, employment, and extracurricular activities including athletics. Title IX is patterned after Title VI of the Civil Rights Act of 1964, which prohibits discrimination in *all* federally assisted programs on the basis of race, color, and national origin. Title IX is narrower than Title VI in that it covers *only* federally assisted *education* programs; it is broader in that it covers both students *and* employees, whereas Title VI in certain instances does not cover employees.

Both Title VI and Title IX are enforced in the same manner, primarily by the Office for Civil Rights (OCR) of the Department of Education (DOE).[9] All government agencies, however, have Title IX enforcement responsibilities. DOE can conduct compliance reviews of institutions and school districts without specific complaints. Individuals and organizations can challenge any discriminatory policy or practice by writing a letter of complaint to the Director, Office for Civil Rights, U.S. Department of Education, Washington, DC 20201-2516, or to the Director of the Regional Office for Civil Rights responsible for enforcement in that state. Complaints can be filed by organizations and individuals, on behalf of oneself, on behalf of others, or on a class-action basis, with or without naming the specific individuals who are affected by the discrimination.[10] Minority women, who often suffer from double discrimination, may file simultaneously under both Title VI and Title IX when they allege both racial and sexual discrimination.

Institutions (also referred to as "recipients" in this paper) may not retaliate against any person because he or she opposed an unlawful practice or policy, or made charges, testified, or participated in a complaint action under Title IX. If discrimination is found, Title IX requires that the government first attempt to resolve the problem through informal conciliation and resolution. The legal sanctions for noncompliance are identical for Titles VI and IX: The government may delay or terminate awards or debar institutions from eligibility for future awards. Although a formal administrative hearing is required before funds can be cut off or before an institution can be debarred from receiving

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future aid, no hearing is required for DOE to *delay* awards. Such delays can occur while DOE informally negotiates with an institution to bring about compliance. DOE can also refer a complaint to the U.S. Department of Justice for possible federal prosecution or to state or local authorities for action under state or local laws. Complainants can bypass DOE action by filing a private suit as individuals against an institution in federal court.

Should Title IX conflict with state or local laws, the principle of federal supremacy holds. In situations in which an institution is involved with private organizations (such as athletic associations); where the rules and regulations of these organizations concerning eligibility and participation in institutional programs conflict with Title IX, the institution must comply with Title IX.

Which Institutions are Covered?

All institutions, including public and private preschools, elementary and secondary schools, and vocational, professional, undergraduate and graduate institutions that receive federal monies by way of a grant, loan, or contract (other than a contract of insurance or guaranty) are covered.[11]

What are the Exemptions?

Admissions Exemptions [106.15][12]

Admissions to private undergraduate institutions, preschools, elementary and secondary schools (other than vocational schools), and single-sex public undergraduate institutions are exempt from the admissions requirements of Title IX. They are not exempt, however, from the obligation to treat students in a nondiscriminatory manner in all areas other than admissions. For example, a private undergraduate institution can decide on the number of women (or men) it will allow to attend, but it cannot discriminate *after* admission on the basis of sex.[13] Public schools, however, must comply with constitutional equal protection requirements in admissions, as well as their other practices.[14]

Military School Exemption [106.13]

Institutions whose primary purpose is the training of individuals for the U.S. military service or the merchant marine are exempt from Title IX.[15]

Religious Exemption [106.12]

Institutions controlled by religious organizations are exempt from compliance with specific requirements of Title IX to the extent that the specific antidiscrimination provision is not consistent with the religious tenets of the organization. Discrimination on the basis of customs or convenience, however, is prohibited.[16]

Other Exemptions [106.14]

Membership practices of university-based social fraternities and sororities are exempt. (Note: Educational programs of these organizations that nonmembers may attend cannot be restricted on the basis of sex.) [106.14(a)]

Membership practices of the YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls are exempt. [106.14(b)]

Activities relating to the American Legion's Boys State, Girls State, Boys Nation, and Girls Nation conferences are exempt.[17] Membership practices of voluntary youth service organizations whose membership traditionally has been limited to persons of one sex under nineteen years of age are exempt. [106.14(c)]

Additional specific provisions concerning competitive athletics, financial aid, facilities, and housing are described in sections below.

Affirmative and Remedial Action [106.3]

The regulation allows institutions to take affirmative action when there is limited participation by one sex and without a specific finding of discrimination. Institutions that have previously discriminated are required to take remedial action to overcome the effects of past discrimination.

What Constitutes Discrimination?

One of the problems encountered under Title IX and other civil rights laws is the answer to this question: What constitutes discrimination? Policies and practices that clearly and specifically apply to one sex are generally easy to assess as discriminatory (e.g., having admission quotas for women or providing athletic scholarships for men but not for women). These policies are overtly discriminatory and violate Title IX.

Other forms of discrimination may be less obvious, such as evaluating the same characteristics or conditions differently for women and men. Title IX prohibits evaluating marital or parental status differently for either sex in determining eligibility for financial aid. For example, an institution cannot give married men more aid on the assumption that men are "breadwinners" and "need" more money than married women. These evaluations and subsequent decisions are often based on stereotyped or inaccurate assumptions about the roles of and differences between women and men. Individuals must be considered on the basis of their individual capabilities and qualifications, *not* on the basis of characteristics attributed to their gender.

Sometimes criteria, policies, procedures, or practices that treat both sexes the same and *appear* to be fair may be discriminatory when they have a disproportionate impact on either sex. Certain rules or practices may not be *intended* to discriminate against women but nevertheless may have a discriminatory effect. For example, prohibitions against admitting older students might in some instances be considered discriminatory to the extent that such policies affect significantly more women than men.[18]

How are Students to be Treated? [106.31]

Although some schools are exempt from coverage with regard to admissions, all schools must treat their students without discrimination on the basis of sex. Title IX (with the exceptions listed elsewhere in this paper) bars sex discrimination in any academic, extracurricular, research, occupational training, or other educational program or activity operated by an organization or agency receiving or benefiting from federal financial assistance.

Institutions may not, on the basis of sex:

- deny any person aid, benefits, or services in all areas, including course offerings, extracurricular activities such as student organizations and competitive athletics,* financial aid,* facilities,* and housing.* (Exceptions exist for starred items. See relevant sections of this paper.)
- provide different aid, benefits, or services, or provide them in a different manner;
- subject any person to separate or different rules of behavior, sanctions, or treatment, including rules pertaining to appearance;
- provide significant assistance[19] such as facilities or a sponsor to any agency, organization, or person which discriminates on the basis of sex in providing any aid or benefit to students or employees;
- limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

Generally, Title IX does not tell an institution what it should do, but only mandates that whatever policies and programs the institution implements must be the same for both sexes. In other words, schools cannot use sex as a category to classify students.

Admissions [106.21]

Discrimination in admissions and recruitment is prohibited in vocational, professional, graduate, and public coeducational institutions. (As noted earlier, private undergraduate institutions and single-sex public undergraduate institutions are exempt from the admissions requirement of Title IX.)

Sex-based admissions quotas or other limitations concerning the number or proportion of students of either sex is prohibited. Ranking applicants separately by sex, giving preference by sex, or otherwise treating individuals differently on the basis of sex is prohibited.

Institutions cannot use any test or other criterion for admission that has a disproportionate adverse effect on persons of either sex, unless the test or criterion has been shown to predict success in the education program and alternative tests or criteria are not available.

The regulation also prohibits rules concerning marital or parental status which treat persons differently on the basis of sex or discriminate because of pregnancy or related conditions (see p. 4). Asking an applicant's marital status *prior* to admission is prohibited although recipients may ask the sex of an applicant provided the information is not used to discriminate.

Recruitment [106.23]

Institutions must make comparable efforts to recruit members of both sexes although special efforts to recruit one sex may be required to remedy the effect of past discrimination. Institutions cannot recruit primarily at single-sex schools or at schools where one sex predominates if this results in discrimination by sex.

Housing and Facilities [106.32, 106.33]

Coeducational housing is not required. Institutions may provide separate housing for men and women; however, housing for each sex as a whole must be:

- proportionate in quantity to the number of students of that sex applying for housing
- comparable in quality and cost to the student. Different rules for each sex, such as requiring women to live on campus while allowing men to live off campus, are prohibited.

Providing different security arrangements such as special locks or guards for one sex but not the other would be a violation of Title IX.

While institutions may assist agencies that provide off-campus housing to students of only one sex, the institution must assure itself that the total housing is proportionately available and comparable in quality and cost to students of both sexes.

Institutions are allowed, but not required, to provide separate toilets, locker rooms, and shower facilities on the basis of sex. However, these facilities must be comparable for both sexes. Additionally, schools may not use the lack of facilities or housing as an excuse to exclude or limit participation by one sex. In some instances, facilities might have to be reallocated or partitions might have to be built. Some facilities might have to be shared (as they are on planes and trains) in order to provide both sexes with comparable facilities.

Courses and Other Educational Activities [106.34]

Courses and other educational activities cannot be provided separately on the basis of sex. Institutions cannot, on the basis of sex, require or refuse a student's participation in health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses [106.34].[20]

Although coeducational physical education classes and activities are required, students may be grouped by ability as assessed by objective standards developed and applied without regard to sex [106.34(b)]. Students may also be separated by sex in coeducational classes or activities when playing contact sports (wrestling, boxing, rugby, ice hockey, football, basketball, and other sports in which the purpose or major activity involves bodily contact) [106.34(c)].

Single-sex or predominantly single-sex choruses are permitted, provided that the criteria used in choosing participants is based on vocal range and quality [106.34(f)].

Counseling [106.36]

Institutions may not discriminate on the basis of sex in counseling or guiding students.

- Institutions may not use different appraisal or counseling materials on the basis of sex or use materials which permit or require different treatment of students on the basis of sex. An exception is permitted if these materials cover the same occupations and interests and are essential to eliminate sex bias. Thus, materials encouraging women to consider engineering, or men to consider nursing, are permitted.
- When a class or course of study has a disproportionate number of students of one sex, the recipient must take such action as necessary to assure itself that sex bias in counseling or testing is not responsible.
- Recipients must develop and use internal procedures to ensure that counseling and appraisal materials are not discriminatory.

Financial Assistance [106.37]

In general, institutions cannot discriminate on the basis of sex in granting financial aid, including scholarships, loans, grants-in-aid, work-study programs, and fellowships. Under Title IX,

institutions may not, on the basis of sex:

- provide different amounts or types of assistance, limit eligibility, apply different criteria, or otherwise discriminate;
- apply any rule of eligibility for assistance which treats persons of one sex differently from persons of the other sex regarding marital or parental status;
- assist, through solicitation, listing, approval, or provision of facilities or services, those agencies or persons providing assistance in a discriminatory manner to the recipient's students.

Thus, offering a woman a loan and giving a comparably qualified male a fellowship or assistantship would be a violation, as would offering women and men with dependent children different amounts of aid because of sex-biased assumptions about their child-care responsibilities.

Special rules apply in the awarding of athletic scholarships, single-sex awards established by legal instruments, and awards to winners of beauty pageants. (See p. 8)

Employment Assistance to Students [106.38]

Institutions cannot discriminate on the basis of sex when hiring students for employment and must follow the Title IX requirements for employees. (See employment section, p. 5)

Institutions cannot discriminate in any student placement services or provide assistance to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

Health and Insurance Benefits and Services [106.39]

Essentially, pregnancy must be treated in the same way as any other temporary physical disability.

- Student medical, hospital, accident, or life insurance benefits, services, policies, or plans (whether voluntary or involuntary) may not discriminate on the basis of sex. Excluding coverage for pregnancy, providing more limited coverage of pregnancy than that of other temporary disabilities, charging an extra premium for pregnancy coverage, or covering pregnancy only for women who are married or who have either a joint or high-option policy violates Title IX. Policies that institutions administer, operate, offer, or participate in are covered.
- Although institutions are not required to provide health services or insurance, those that provide full services and insurance must include gynecological care, and insurance must cover pregnancy and related conditions. Institutions whose religious beliefs are not consistent with some aspects of gynecological care need not supply those types of care but must provide all other types of gynecological care if they provide full services to students.
- Institutions are allowed to provide benefits or services which may be used by a different proportion of one sex than the other, including family planning services.

Abortion [Civil Rights Restoration Act, Section 109]

Institutions are neither required to nor prohibited from providing or paying for any benefit or service, including the use of facilities, related to an abortion. No penalties may be imposed on any person seeking or receiving any benefit or service related to a legal abortion. Thus institutions need not cover abortion under insurance plans or provide the abortion procedure itself. The legislative history of the Civil Rights Restoration Act demonstrates that this was the purpose of this legislation, that complications of abortions must be covered, and that discrimination on the basis of abortion is prohibited.

Marital or Parental Status [106.40]

Institutions may not promulgate or apply any rule concerning a student's actual or potential parental, family, or marital status which makes distinctions on the basis of sex. For example, if an institution wished to exclude *all* married students, it could do so, provided the exclusion did not have a disparate impact on women, but it could not exclude only married females while allowing married males to participate.

- Students may not be discriminated against or excluded from any educational program or activity including classes and extracurricular activities on the basis of a student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery unless the student voluntarily requests to participate in a different program or activity.
- A recipient which operates a *voluntary*, separate education program for pregnant students must ensure that its instructional program is comparable to the regular instructional program.
- A student cannot be required to have a physician's note certifying her ability to remain in a regular education program unless the institution requires a physician's certification for all students with other physical and emotional conditions requiring the attention of a physician.
- Pregnancy and related conditions must be treated as justification for a leave of absence for as long as is deemed necessary by the student's physician. In the case of an institution that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, an institution shall treat pregnancy, childbirth, and related conditions as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician. After a leave, a student must be reinstated to her original status.
- As noted earlier, recipients must treat pregnancy-related disabilities in the manner as any other temporary disability with regard to any medical or hospital benefit, service, or policy offered to students.

Athletics [106.41]

No person shall be subjected to discrimination based on sex in any interscholastic, intercollegiate, club, or intramural athletics offered by recipients.

Separate Teams [106.41(b)] for each sex are permitted when:

- the activity involved is a contact sport, such as boxing, wrestling, rugby, ice hockey, football, basketball, and other sports whose purpose or major activity involves bodily contact, or
- selection for such teams is based upon competitive skill.

If there is a single team for one sex only in a *noncontact* sport, and athletic opportunities for the other sex have been limited, members of that sex must also be allowed to try out for the team. In contrast, a single-sex team in a contact sport can remain single sex; members of the other sex do not have a right under Title IX to try out for that team.[21] Thus an all-male football team can remain all male under Title IX. Because schools must provide overall equal opportunities in athletics for both sexes, a school could not, for example, offer only contact sports for men and

a limited program or none for women. (See next section.)

Equal Opportunity [106.41(c)] must be provided for members of both sexes in interscholastic, intercollegiate, club, or intramural athletics. In assessing whether athletic opportunities are equal, the Department of Education will consider, among other factors:

- whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes
- provision of equipment and supplies
- scheduling of games and practice times
- travel and per diem allowance
- opportunity to receive coaching and academic tutoring
- assignment and compensation of coaches
- provision of locker rooms, practice, and competitive facilities
- provision of medical and training facilities and services
- provision of housing and dining facilities and services
- publicity.

Although equal expenditures are not required, DOE *may* consider the failure to provide necessary funds for teams of one sex in assessing equality of opportunity for members of each sex.

Cheerleading programs are not considered part of athletic programs. Thus membership practices may not discriminate on the basis of sex. Insofar as a cheerleading program is viewed by DOE as *support* provided to an institution's athletic teams, it must be available for men's and women's teams without discrimination.

Coaching is both an employment and student issue. Discrimination in employment areas violates Title IX (see section on employment, below). Additionally, if coaches of women's teams (whether male or female) are treated unequally in salaries, benefits, and other conditions of employment such as availability of facilities, they may be discouraged from coaching women's teams. Thus, discrimination against coaches may violate Title IX because of the impact on the quality of coaching available for women students. (See Appendix, p. 10, for a more thorough discussion of athletic requirements.)

Textbooks and Curricular Materials [106.42]

The regulation does not require or prohibit the use of particular textbooks or curricular materials.

Sexual Harassment

Although Title IX does not specifically mention sexual harassment, both DOE and the courts have interpreted Title IX to prohibit sexual harassment. (Employees, including student employees, are also protected against sexual harassment and other forms of discrimination by Title VII of the Civil Rights Act of 1964.[23])

In a "Memorandum to Regional Civil Rights Directors," in August 1981, DOE defined sexual harassment as "verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or an agent of [an institution] that denies, limits, provides different, or conditions the provision of aid, benefits, services, or treatment protected under Title IX." Thus sexual advances, requests, or verbal conduct constitute sexual harassment when they are made a condition for an individual's education or employment, when rejection of or submission to such conduct is used as the basis for academic or employment decisions affecting the individual, or when such conduct interferes with the individual's work performance or educational environment.

Peer Harassment

Although the regulation does not address this issue, psychological and sexual harassment of students *by students* on the basis of sex may also violate Title IX. Institutions are required to provide an environment free of discrimination. To the extent that peer harassment may be viewed as constituting an offensive discriminatory environment that interferes with a student's learning and well-being, institutions are in violation of Title IX if they ignore peer harassment based on sex.[24]

Sexual Assault, Abuse, and Rape

The regulation does not specifically mention these issues. In instances of individual or gang rape or other forms of sexual assault and abuse, refusal to investigate or take corrective action would be construed as a violation of Title IX because the institution would be handling crimes against women differently from other campus crimes.

How are Employees to be Treated? [106.51–61]

Title IX applies to all employees (full and part time), including student employees and those participating in work-study, cooperative education, assistantships, and internship programs.[24] For example, giving women students in these positions primarily clerical duties while giving men more substantive work violates Title IX. Women students (as well as other applicants) cannot be excluded from night jobs or maintenance positions because they are female.

Institutions may not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities because of sex.

Furthermore, institutions may not enter into any contractual or other relationships that directly or indirectly have the effect of subjecting employees or students to sex discrimination, including relationships with employment and referral agencies, labor unions, and organizations administering or providing fringe benefits to employees of the recipient.

Preference cannot be given to applicants for employment on the basis of attendance at a single-sex educational institution or entity if giving such preference has the effect of discriminating on the basis of sex.

In general, the regulation prohibits discrimination on the basis of sex in all aspects of employment including:

- employment criteria, advertising, and recruitment
- hiring, upgrading, promotion, tenure, demotion, transfer, lay off, termination, application of nepotism policies, right of return from lay off, and rehiring
- rates of pay and other forms of compensation
- job assignments, classifications, and structure including position descriptions, lines of progression, and seniority lists
- terms of collective bargaining agreements
- granting and return from leaves of absence, leave for pregnancy and related conditions,[25] and leave for persons of either sex to care for children or dependents
- fringe benefits available by virtue of employment whether or not administered by the recipient

- selection and financial support for training including apprenticeships, professional meetings, conferences, other related activities and selection for tuition assistance, sabbaticals, and leaves of absence for training
- employer-sponsored activities including social or recreational programs
- any other term, condition, or privilege of employment.

Recruitment [106.53]

If a recipient is found to be currently discriminating on the basis of sex in employment (or to have done so in the past), the recipient shall recruit members of the sex against which it has discriminated in order to overcome the effects of past discrimination.

Recipients cannot recruit primarily at entities which furnish applicants who are predominantly members of one sex.

Compensation [106.54]

Recipients may not, on the basis of sex, make distinctions in rates of pay or other compensation or have a policy which results in paying lower wages to one sex than to the other for equal work on jobs requiring equal skill, effort, and responsibility and performed under similar working conditions.

Job Classification [106.55]

A recipient may not:

- classify a job as being for males or for females;
- maintain or establish separate lines of progression, seniority lists, career ladders or tenure systems, position descriptions, or job requirements that classify persons on the basis of sex unless sex is a *bona fide* occupational qualification.[26]

Fringe Benefits [106.56]

Fringe benefits include any medical, hospital, accident, life insurance, or retirement benefit, service, policy, or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment. A recipient may not:

- discriminate on the basis of sex with regard to making fringe benefits available to employees, spouses, families, or dependents of employees;
- administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for male and female employees *or* equal contributions for both sexes;[27]
- administer, operate, offer, or participate in a retirement plan with different optional or compulsory retirement ages based on sex or which otherwise discriminates on the basis of sex.

Marital or Parental Status [106.57(a)]

Recipients are prohibited from taking any employment action or applying any policy concerning the potential marital, parental, or family status of employees or applicants for employment which treats persons differently on the basis of sex or is based on whether employees or applicants are heads of household or principal wage earners.

Pregnancy [106.57(b), (c), (d)]

An institution may not discriminate in employment on the basis of pregnancy or related conditions. Pregnancy and related conditions must be treated as any other temporary disability for all job-related purposes including leave, seniority, disability payment, reinstatement, and fringe benefits. If the employer has no temporary disability policy, pregnancy and related conditions must be treated as justifications for a leave of absence without pay for a reasonable period of time. After such leave the employee must be reinstated to her original (or comparable) status without decrease in rate of compensation or loss of promotional opportunities.[28] No penalties may be imposed on any employee seeking or receiving any benefit or service related to abortion.[29]

Pre-employment Inquiries [106.60]

Institutions may not make pre-employment inquiry as to the marital status of an applicant for employment. Pre-employment inquiry as to an applicant's sex may be made only if such inquiry is made equally of applicants of both sexes and if the results are not used to discriminate.

A Partial List of Actions Institutions Must Take

The regulation for Title IX specifies a number of actions that educational institutions receiving federal funds (as well as other recipients of federal education funds) must take in order to comply with the law.

The following list highlights *some* of the specific actions that the regulation requires. The relevant section of the regulation is noted at the beginning of each action listed.

Institutions (as well as other recipients of federal education funds) must do the following:

106.4 *Assure the federal government that they are complying with the requirements of Title IX.*

- All applications for federal education funds must be accompanied by a signed one-page assurance of compliance with Title IX.
- Assurances may also be required of subgrantees, contractors, and subcontractors.

106.8(a) *Designate at least one employee* responsible for:

- Coordinating efforts to comply with the Title IX regulation
- Investigating any Title IX complaint that is communicated to the recipient.

106.8(a) *Notify all students and employees of the appointment of the person(s) responsible for Title IX compliance* including the name(s), office address(es), and telephone number(s).

106.8(b) *Adopt and publish grievance procedures* for both student and employee complaints under Title IX.[30] Grievance procedures should also cover harassment.

106.9 *Notify certain persons and groups about the recipient's nondiscriminatory policy and Title IX obligations.*

This notice must state that:

- The recipient does not discriminate on the basis of sex.
- Its obligations under Title IX prohibit such discrimination.
- Inquiries concerning Title IX may be referred to the designated Title IX compliance person(s) or to the Assistant Secretary for Civil Rights, U.S. Department of Education, Washington, DC 20201-2516.

Implement specific and continuing steps to notify the following groups of the nondiscriminatory policy under Title IX.

- Applicants for admission and employment

- Students[11]
- Employees
- Sources of referral of applicants for admission and employment
- All unions or professional organizations holding collective bargaining or professional agreements with the recipient.

The initial notification concerning the nondiscriminatory policy should have occurred within ninety days of the effective date of the regulation (July 21, 1975) or when the recipient was first covered by Title IX, whichever came later. Such notification should include publication in:

- Local newspapers
- Newspapers and magazines operated by the recipient or by student, alumnae, or alumni groups
- Memoranda or other written communications distributed to every student and employee.

Notification of nondiscrimination must be prominently placed in each announcement, bulletin, catalogue, or application form used in connection with students and employees as well as in recruiting students and employees.[12]

106.9(c) *Notify its admission and recruitment representatives (for both students and employees) of the nondiscrimination policy and require these persons to adhere to this policy.*

106.12(b) *Regarding institutions which are eligible for and are seeking a "religious exemption" from portions of Title IX:*

- Submit to the Assistant Secretary for Civil Rights a statement identifying the requirements of the Title IX regulation that conflict with a specific religious tenet of the religious organization controlling the institution. The statement should be submitted by the highest-ranking official of the institution.

106.31(d) *Regarding programs not operated by the recipient but which are either required or considered part of a program or activity sponsored by the recipient:*[13]

- Develop and implement a procedure designed to assure itself that required programs and activities operated by others do not discriminate on the basis of sex against the recipient's applicants, students, or employees.

106.32(c)(2) *Regarding housing not provided by the recipient, but which the recipient solicits, lists, approves, or assists in providing:*

- Take "reasonable action" to assure itself that this housing is proportionate in quantity and comparable in quality and cost for students of both sexes.

106.36(b) *Regarding student counseling and appraisal materials:*

- Develop and use internal procedures for ensuring that these materials do not discriminate on the basis of sex. When the use of a test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

106.36(c) *Regarding disproportionate representation of one sex in classes:*

- Take such action as is necessary to assure itself that such disproportion is not the result of sex discrimination in counseling or appraisal materials, in the application of these materials, or sex discrimination by academic or guidance counselors.

106.37 *Regarding financial assistance:*

- Develop and use procedures to assure overall nondiscrimination if the recipient provides any single-sex financial assistance established by wills, bequests, or similar legal instruments.
- If aid is given to athletes, provide "reasonable opportunities" for athletic scholarships and grants-in-aid for members of each sex in proportion to the number of students of each sex participating in intercollegiate athletics.

106.38(a) *Regarding student placement services:*

- Assure itself that any agency, organization, or person who receives assistance from the institution for the purpose of making employment available to students provides employment without discrimination on the basis of sex.

106.40(b)(3) *Regarding separate classes or activities for pregnant students:*

- Ensure that any separate program, if offered, is comparable to that offered to non-pregnant students.[14]

Single-Sex Organizations and Programs

The following analysis attempts to clarify which single-sex groups and programs are allowed and which are prohibited. (The numbers that appear in brackets refer to the relevant sections of the Title IX regulation.)

Groups Whose Membership Practices are Exempt [106.14]

Title IX was amended by the Education Amendments of 1974 to exempt the membership practices of certain organizations.[15] The statute exempts *only the membership practices* of these groups; programs provided by these organizations to persons other than (or in addition to) their members cannot be limited to one sex. The exemption of membership practices applies *only* to:

- YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.
- *Social* sororities and fraternities that have a 501(a) tax exemption from the Internal Revenue Service, *and* whose members consist primarily of students in attendance at higher education institutions.
- Voluntary youth service organizations that have a 501(a) tax exemption from the Internal Revenue Service, *and* whose membership has traditionally been limited to one sex and principally to persons less than nineteen years of age.

Programs Operated by Educational Institutions [106.3(a), (b); 106.31]

With few exceptions, programs operated by institutions cannot provide different benefits or services or treat students differently on the basis of sex. The regulation does not prohibit affirmative action and requires affirmative steps to overcome discrimination at the institution, so that some all-female programs and courses may be allowed. Programs aimed at women need not be abolished although some modifications may be needed.[16] (See also "Programs Aimed at Improving the Status of Women" below.)

Women's Studies Courses [106.34] Almost all such courses must be open to both sexes. The fact that more women than men

may be enrolled does not constitute discrimination.

Continuing Education Programs [106.34] Programs and services which are aimed at persons continuing their education must be open to both sexes. (Many continuing education programs originally developed for returning women students have been open to men for several years.)

Programs Aimed at Improving the Status of Women [106.3(a)(b)] Remedial programs and services provided by the institution and aimed at special groups (such as older women who have been out of school and out of the workforce for a number of years) may continue. In some instances, all-female courses or programs may be justified when they exist to remedy the effects of past discrimination and are appropriately tailored to justify the all-female program or course. In those instances where this is not the case men may not be excluded if they wish to participate. A description of such a program or course might read, "This program is primarily aimed at women who have been out of the workforce and are returning to school. However, men who believe they could benefit from this service and wish to participate may do so."

Campus Committees on the Status of Women [106.3(a), (b); 106.31] Such committees do *not* violate Title IX. However, in general, membership cannot be restricted on the basis of sex. Having an all-female or predominantly female committee would also not violate Title IX if the members had been chosen on some basis other than sex (such as their special knowledge or ability to contribute constructively to the committee's activities.) Moreover, in some circumstances, gender may be a relevant factor in committee selection, such as a committee of pregnant students and recent mothers set up to advise on matters relating to the needs of pregnant students.

Women's Centers [106.3(a), (b); 106.31] Campus women's centers, whether operated by the institution or by students with assistance from the institution, can continue without changing their purpose (for example, to improve the status of women). Generally, however, their membership, programs, and services must be open to both sexes. (Most centers allow men to use their services and to participate in their programs.) Some all-female programs may be allowed where particular experience is central to a program, such as a seminar for rape survivors.

Father-Son and Mother-Daughter Events[37] Title IX was amended by the Education Amendments of 1976: ". . .this section [901(a) of Title IX] shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex." (Note: The language of the amendment does not *exempt* mother-son or father-daughter events from Title IX.)

No regulation has been issued to indicate how federal policy will implement this provision. The following criteria for assessing activities that are "reasonably comparable" might include:

- type of activity
- where the event is held
- budget
- number of events
- staff support
- staff attendance
- publicity
- prestige
- time of event
- duration of event
- cost of event to participants.[38]

Housing [106.32] Institutions may provide separate housing on the basis of sex if the housing provided to one sex is proportionate in quantity to the number of students applying for such housing, and comparable in quality and cost to that provided to students of the other sex.

Financial Aid [106.37] Institutions cannot on the basis of sex provide different types of assistance, limit eligibility, apply different criteria, or otherwise discriminate. The following three exemptions are allowed:

Single-Sex Scholarships [106.37(b)] Scholarships developed as affirmative action such as those aimed at encouraging women to study in a nontraditional field need not be balanced with similar scholarships for men as in the case of other sex-restricted awards explained below. All other scholarships or other financial aid limited to one sex are allowed only if the overall effect does not result in sex discrimination *and* all of the following conditions are met:

- the scholarship or aid and the limitation to one sex was established by a domestic or foreign will, trust, bequest, or other similar legal instrument, *or* by acts of a foreign government,[39] *and*
- the institution follows these procedures:
  - students are selected for financial aid on the basis of nondiscriminatory criteria and not on the availability of sex-restricted funds
  - sex-restricted aid is allocated to students selected in this nondiscriminatory manner
  - no student is denied an award because of the absence of a sex-restricted award.

After *all* recipients of financial aid have been selected they may be matched with sex-restricted awards. If the total of sex-restrictive awards is insufficient to provide awards for the women and men previously selected, the institution must obtain funds from other sources in order to assure that no student was denied an award because of his or her sex. If there are no further funds to match the sex-restricted funds, no further awards can be made from the sex-restricted source.

Athletic Scholarships [106.37(c)] Institutions that award athletic assistance must provide "reasonable opportunities" for both sexes to receive athletic scholarships and grants-in-aid in proportion to the number of male and female students participating in intercollegiate athletics. Separate scholarships may be offered in connection with single-sex teams to the extent that they are consistent with the sections in the regulation concerning financial aid [106.37] and athletics [106.41]. Unequal spending for either the men's or women's athletic assistance program may be justified only by limited sex-neutral factors. The general principle of the regulations, however, is proportionality. Moreover, Title IX does not allow a low female participation rate resulting from discrimination to justify low scholarship proportions for women.

Scholarships Awarded to Winners of Beauty Pageants Title IX was amended by the Education Amendments of 1976, which states:[40] ". . .this section [901(a) of Title IX] shall not apply

with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and *talent* [italics added] of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law." No regulation has been issued to indicate how federal policy will implement this provision.

The amendment is aimed at permitting colleges and universities to provide financial aid to winners of local, state, and national pageants or contests such as Miss America and Junior Miss, all of which restrict participation to females only. Higher education institutions cannot award scholarships or other financial assistance to winners of beauty pageants where *only* beauty and poise are judged. Such awards must be based on a combination of all three factors: personal appearance, poise, *and* talent. A school cannot award scholarships or other financial assistance on the basis of winning an all-male contest (for example, football players judged on the basis of "personal appearance, poise, and talent"). Although "personal appearance, poise, and talent" are not defined in the statute, the legislative history clearly indicates that the exemption is to be limited to "junior-miss type" pageants. (See *Congressional Record*, S. 14640, August 26, 1976.) The amendment conditions the exemption from Title IX on the basis of compliance with "other nondiscrimination provisions of federal law." Thus, schools cannot base financial awards on students winning a contest which restricted eligibility on the basis of race, color, national origin, or disability.

Health Services [106.39] Institutions may provide benefits or services such as gynecological care or family-planning programs even though these benefits or services may be used more by women than men.

Athletic Teams [106.41] Separate intercollegiate, intramural, and club teams for men and/or women are allowed if overall equal opportunity to participate exists for both sexes *and* under the following circumstances:

- when there is a *separate team for each sex*, such as a men's basketball team and a women's basketball team; or
- when the sport is a contact sport such as boxing, wrestling, rugby, ice hockey, football, or basketball or where selection is based on competitive skill.

If a school has a team for one sex in a *noncontact* sport *and* if athletic opportunities for the other sex have been previously limited, members of the excluded sex must be allowed to try out for the team. (See Appendix)

Locker Rooms [106.33; 106.41(c)(7)] Title IX does not require integrated locker rooms. Locker rooms do not need to be identical but schools must provide "equivalent" treatment, services, and benefits; that is, the effect of any differences must be negligible.

Bathrooms [106.33] Title IX does not require integrated or shared bathrooms. Differences in availability and quality may be allowed, provided that the effect of any differences is negligible. Lack of bathroom facilities for one sex cannot be used to limit access or participation of that sex in any courses, programs, or other activities.[41]

Programs Not Operated by Educational Institutions but Receiving Significant Assistance from Recipients of Federal Funds [106.31(d)]

Title IX covers the activities and programs of education institutions that receive federal funds. Unless it falls under one of the exemptions listed in the section "Groups Whose Membership Practices are Exempt," any organization that receives "significant assistance" from institutions cannot discriminate on the basis of sex in any way, including membership, programs, services, or benefits.[42] Section 53 of the introductory material preceding the regulation as originally published in 1975 stated:

> Thus, such forms of assistance as faculty sponsors, facilities, admininstrative staff, etc., may be significant enough to create the nexus and to render the organization subject to the regulation. Such determination will turn on the facts and circumstances of specific situations.[43]

Organizations operating off campus and *without significant assistance* from institutions (and which do not receive any direct federal funding of their own) are not covered by Title IX.

Business and Professional Fraternities, Sororities, and Societies [106.6(c), 106.31(b)(7), (d)] When these organizations receive significant assistance from the institution, their membership must be open to both sexes. Similarly, their programs, services, and benefits must be offered without discrimination on the basis of sex.

Women's Organizations, such as Women's Honorary Societies [106.3(a), (b); 106.6(c); 106.31(b)(7), (d)] When these groups receive *significant* assistance from the institution, their *membership* must be open to both sexes. However, the *purpose* of such groups (for example, to develop leadership in women) does *not* violate Title IX. In general, males who subscribe to the general purpose of the organization and wish to join cannot be denied membership because of their sex unless the purpose of the group is sex-specific, such as an organization set up to provide support for pregnant students. Programs, services, and benefits must also be offered to both sexes. (In practice, few males are likely to join, and those who do are likely to be sympathetic to the aims of the group. The situation is somewhat analogous to that of a campus chapter of NAACP, a group that aims to better the status of Blacks and allows whites to join.)

Boys State/Nation and Girls State/Nation Title IX was amended by the Education Amendments of 1976:[44]

> . . . this section [901(a) of Title IX] shall not apply to:
> (A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
> (B) any program or activity of any secondary school or educational institution specifically for
> (i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or
> (ii) the selection of students to attend any such conference;

No regulation has been issued to indicate how federal policy will implement this provision.

Boys State/Nation and Girls State/Nation are conferences sponsored by the American Legion and the American Legion

Auxiliary. They are designed to teach high school boys and girls how the American political system works. Delegates are sent to the state and national conferences, which are run like political conventions. These conferences are often housed at higher education institutions.

Unlike the amendment concerning father-son and mother-daughter activities, there is no statutory requirement that comparable activities must be provided for both sexes.

Appendix: Title IX and Athletics

Summary

On December 4, 1979, the Department of Health, Education, and Welfare announced the final version of a policy interpretation concerning sex discrimination in varsity collegiate athletics.[45]

The final policy was developed in response to requests from colleges and universities for guidance about the athletic sections of the 1975 Title IX regulation.

The policy interpretation was intended to clarify what the Title IX regulation requires; it supplements, and does not replace or change, that regulation. Consistent with the statute and regulation, the Department of Education uses the policy interpretation to determine whether a college's intercollegiate athletic program is in compliance with Title IX. A summary of the final policy interpretation, along with other information developed by the federal government, follows.

The final policy interpretation clarifies the meaning of "equal opportunity" in intercollegiate athletics. It explains the factors and standards set out in the law and regulation which DOE will consider in determining whether an institution's intercollegiate athletics program complies with the law and regulation. It also provides guidance to assist institutions in determining whether any disparities that may exist between men's and women's programs are justifiable and nondiscriminatory. The policy interpretation is divided into three sections that explain what is required in the following three major areas.

- **Compliance in Financial Assistance (Scholarships) Based on Athletic Ability** In accordance with the Title IX regulation, the governing principle in this area is that all such assistance should be available on a basis substantially proportional to the number of male and female participants in the institution's athletic program.
- **Compliance on Other Program Areas** (equipment and supplies; games and practice times; travel and per diem costs; coaching and academic tutoring; assignment and compensation of coaches and tutors; locker rooms, and practice and competitive facilities; medical and training facilities; housing and dining facilities; publicity; recruitment; and support service). In accordance with the Title IX regulation, the governing principle is that male and female athletes should receive equivalent treatment, benefits, and opportunities.
- **Compliance in Meeting the Interests and Abilities of Male and Female Students** In accordance with the Title IX regulation, the governing principle in this area is that the athletic interests and abilities of male and female students must be equally effectively accommodated.

Standards for Measuring Compliance

The key standards for measuring compliance in each of the above program areas are:

- overall proportionality in availability of athletic scholarships
- overall (program-wide) equivalence in availability, quality and kind of athletic benefits, opportunities, and treatment afforded student athletes
- effectiveness in equally accommodating the interests and abilities of presently enrolled male and female student athletes.

The policy does not require that program components be identical but provides that men's and women's sports programs will be compared to determine whether the colleges' policies and practices result in *overall* program equivalence. (Equivalence is defined as "equal or equal in effect.")

The policy interpretation also provides a limited number of acceptable justifications for "nondiscriminatory differences" in each of the three major program areas. Disparities in proportional scholarship awards, for example, might be justified if the difference arose as the result of a *nondiscriminatory* uneven distribution of higher out-of-state tuition grants between men and women. A lack of women's programs cannot be used to justify discrimination in scholarship awards.

Furthermore, in program areas *other than financial assistance*, disparities in one program component might be counterbalanced by a disparity in some other aspect of the program, provided the overall opportunities are equivalent.[46] For example, a small difference in the quality of equipment which favors the men's teams might be weighed against a small disparity in opportunities for travel which favors the women's program. However, no overtly discriminatory policy or disparity so severe that it, by itself, produces inequality of overall athletic opportunity will be treated with such flexibility in applying the policy interpretation.

Consistent with the requirements of the regulation, the Department of Education will determine whether a school's athletic program complies with Title IX by assessing three basic aspects of the athletic program: financial assistance, athletic benefits and opportunities, and accommodation of student interest and abilities.

Financial Assistance [106.37(c)]—Scholarships and grants-in-aid provided on the basis of athletic ability. The Title IX *regulation* requires that colleges and universities provide reasonable opportunities for male and female students to receive scholarships and grants-in-aid in proportion to the number of male and female participating athletes.

The *policy* explains that schools must distribute all athletic assistance on a substantially proportional basis to the number of participating male and female athletes. Unequal spending for

either the men's or the women's program may be justified by sex-neutral factors, such as a higher number of male athletes recruited from out of state, provided that recruitment practices are not discriminatory.

Scholarship dollars must be divided equally in proportion to the numbers of male and female athletes. For example, in a school with seventy male and thirty female athletes and a scholarship fund of $100,000, male athletes are entitled to $70,000 and female athletes are entitled to $30,000.

Unequal results can be explained by factors such as

- Higher scholarship costs for out-of-state students that do not result from policies that limit the availability of scholarships for the underrepresented sex.
- Reasonable professional decisions about the number of awards in any year that is most appropriate for program development.

Athletic Benefits and Opportunities [106.41(c)] This includes equipment, travel, compensation of coaches, facilities, housing, publicity, and other aspects of a program.

The Title IX *regulation* specifies the factors that DOE should assess in determining whether a school is providing equal athletic opportunity:

- Equipment and supplies
- Scheduling of games and practice
- Assignment and compensation of coaches
- Housing, dining services, and facilities
- Publicity
- Travel and per diem costs
- Opportunities for coaching
- Locker rooms, practice, and competitive facilities
- Medical and training services and facilities
- Other relevant factors as determined by OCR.

The *policy* explains that schools must provide "equivalent" treatment, services, and benefits in those areas. DOE will assess each of those factors by comparing for each sex:

- Availability
- Kind of benefits
- Kind of treatment
- Quality
- Kind of opportunities.

Each program should be equal or equal in effect.

DOE does not require identical benefits, opportunities, or treatment, but the effect of any differences must be negligible.

Accommodation of Student Interests and Abilities [106.41(c)] The third section of the policy sets out how schools can meet the requirement of the regulation to "effectively accommodate the interests and abilities of both sexes."

The Title IX *regulation* requires that schools effectively "accommodate the interests and abilities of students of both sexes in the selection of sports and levels of competition."

The *policy* explains how to accommodate interests and abilities through selection of sports, levels of competition, and measuring of interests *and* abilities:

Selection of Sports

- When there is a team for only one sex and members of the excluded sex are interested in the sport, the university may be required to:
  - Permit members of the excluded sex, whose athletic opportunities have previously been limited, to try out for the team if it is not a contact sport; or
  - Sponsor a separate team for members of the previously excluded sex if there is a reasonable expectation of intercollegiate competition for that team.
- Teams do *not* have to be integrated.
- The same sports do *not* have to be offered to men and to women.

Levels of Competition. Equal competitive opportunity means:

- The numbers of men and women participating in intercollegiate athletics is in proportion to their overall enrollment; or
- The school has taken steps to insure that the sex underrepresented in athletic programs is offered new opportunities consistent with the interests and abilities of that sex; or

WHAT ABOUT THE FOOTBALL TEAM?

This material is excerpted from an HEW press release, dated December 4, 1979, accompanying the issuance of the final policy interpretations. It describes the standard to be used in evaluating compliance and the flexibility allowed within that standard.

Scholarships

The Standard: Total dollars available for all sports must be divided between men and women in proportion to number of male athletes and number of female athletes.

Flexibility: Each school decides how to spend the dollars available for men's programs and women's programs

Disparities in proportionality of total scholarship aid may be justified by:

- Decision to phase-in women's scholarships if appropriate for development of women's teams, provided that such development is not hindered in a discriminatory manner, or
- Other nondiscriminatory factors.

Other Program Components

The Standard: For all sports, program components (e.g., equipment, facilities, medical services) must be substantially equivalent for men and women athletes.

Flexibility: Disparities in any program component may be justified by

- Nature of the sport (e.g., frequency with which equipment wears out; size and upkeep requirements of stadium; rate of injury from participation), or
- Size of competitive events, or
- Other nondiscriminatory factors.

Effect on Competition: Because all schools are subject to Title IX requirements for increasing women's programs, the relative competitive edge of one school over another should not be adversely affected.

■ The present program accommodates the interests and abilities of the underrepresented sex.

Equal competitive opportunity also means:

■ Men and women athletes, in proportion to their participation in athletic programs, compete at the same levels; or

■ The school has a history and practice of upgrading the levels at which teams of the underrepresented sex compete.

Schools are not required to develop or upgrade an intercollegiate team if there is no reasonable expectation that competition will be available for that team.

Measuring Athletic Interests and Abilities. The recipient must:

■ Take into account the increasing levels of women's interests and abilities

■ Use methods of determiningg interest and ability that do not disadvantage the underrepresented sex

■ Use methods of determining ability that take into account team performance records

■ Use methods that are responsive to the expressed interests of students capable of intercollegiate competition who belong to the underrepresented sex.

The Enforcement Process

The policy interpretation also describes the procedures used by the Department of Education to enforce Title IX and introduces a special approach to be applied to intercollegiate athletic programs: a state of conditional compliance. Under this approach a school that is currently in violation of Title IX's requirements in intercollegiate athletics may still avoid being found in noncompliance if it can demonstrate both:

■ a *history and continuing practice* of upgrading the program revealed to be deficient, *and*

■ an *acceptable* plan indicating that the problem revealed during an investigation by the Office for Civil Rights will be corrected within a "reasonable" period of time. Such a principle does not apply to private litigation.

NOTES

1. See Title IX, Public Law 92-318 (1972) as amended by P.L. 93568 (1974), P.L. 94-482 (1976), and P.L. 100-249 (1988, Civil Rights Restoration Act).

2. 465 U.S. 555, 104 Supreme Court 1211 (1984)

3. The effective date is the date of passage, March 22, 1988. The act is not retroactive. According to the Office for Civil Rights at the Department of Education, which enforces Title IX, discriminatory acts that occurred prior to that date will be judged under the *Grove City* standard. However, discrimination that occurred prior to March 22, 1988, and *is continuing* will be judged under the Civil Rights Restoration Act.

4. Some exceptions remain as allowed in the original Title IX legislation.

5. This paper is based on numerous publications by PSEW: *Sex Discrimination Against Students: Implications of Title IX of the Education Amendments of 1972* (1975); *Partial List of Actions Institutions Must Take Under Title IX* (1975); *Important Title IX Resources* (1976–77); *Single Sex Organizations and Programs Under Title IX* (1975); Title IX of the Education Amendments of 1972, as Amended (1979); *The Education Amendments of 1976: Impact on Women and Girls Concerning Title IX and Other Amendments* (undated); *Employment Self Evaluation Checklist* (1975); *Health Services and Title IX* (1981); *Update on Title IX and Sports* (1978); *Update on Title IX and Sports No. 3* (1980); and *Sex, Sports, and Discrimination* (1979). The following publications were also useful: "Sex Discrimination Provisions Concerning Students and Employees Contained in the Higher Education Act: the Title IX Regulation," *Federal Register* 45 (1980), 30955–30965; *Title IX of the Education Amendments of 1972—A Summary of the Implementing Regulation*, Resource Center on Sex Roles in Education, National Foundation for the Improvement of Education (Washington, DC: U.S. Department of Health, Education, and Welfare, 1976); and *Summary of the Regulation for Title IX Education Amendments of 1972*, Project for Equal Education Rights (Washington, DC: no date.)

6. Title IX also contains provisions concerning blind students and amends the Civil Rights Act of 1964 and the Equal Pay Act. This paper does not cover these provisions.

7. For a complete text of the Title IX regulation, see *Federal Register* 45 (May 9, 1980), 30955–30965.

8. Title IX protects both male and female students from discrimination on the basis of sex.

9. Other federal agencies providing assistance for educational programs also have enforcement jurisdiction.

10. Complaints must be filed within 180 days of the date of discrimination unless the discrimination is ongoing.

11. Educational programs conducted by noneducational agencies, organizations, or businesses are also covered when they receive federal funds.

12. Numbers in brackets refer to the relevant section of the Title IX regulation unless otherwise noted. See note 7.

13. Because private undergraduate admissions are exempt but admissions to vocational and professional schools are not exempt, it is not clear what the intent of Congress was concerning schools that fall into both categories: private undergraduate vocational and professional schools. The statute is silent.

14. See *Mississippi University of Women v. Hogan*, 102 Supreme Court 3331 (1982).

15. Subsequent legislation opened the service academies to women.

16. Institutions claiming a religious exemption must submit a statement from the highest ranking official of the institution to the Assistant Secretary for Civil Rights identifying which parts of the regulation conflict with a specific tenet of the religious organization.

17. This exemption was an amendment to Title IX after the regulation was published. Public Law 94-482, Title IV, Section 412(a), October 12, 1976.

18. Discrimination on the basis of age is also prohibited in federally assisted programs. For more information on this topic, see *The Age*

Discrimination Act of 1975 and Women on Campus (Washington, DC: Association of American Colleges' Project on the Status and Education of Women, 1978).

19. DOE has defined "significant assistance" as supplying money and facilities at less than market value such as providing free or discounted computer time, making the school's mail service available, or providing space in the catalogue; providing services and privileges to one program or organization but not to the general student body; awarding recognition to members or approval to organizations when required for operation on campus; and giving any assistance without which the organization could not exist in its present form.

20. Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be separated by sex [106.34(e)]. Local educational agencies may not on the basis of sex exclude any person from admission to any institute of vocational education or any other school or educational unit it operates unless it otherwise makes available to such persons (pursuant to the same admission policies) the courses, services, and facilities comparable to each course, service, and facility offered in or through such schools [106.35].

21. State constitutions and state laws, however, may apply.

22. See *Title VII Sexual Harassment Guidelines and Educational Employment* (Washington, DC: AAC/PSEW, 1980).

23. See Jean O'Gorman Hughes and Bernice R. Sandler, *Peer Harassment: Hassles for Women on Campus* (Washington, DC: AAC/PSEW, 1988).

24. Employees in educational institutions whose primary purpose is to train individuals for military service of the United States or the merchant marine are exempt. Employees in educational institutions controlled by religious organizations are exempt only to the extent that compliance with the regulation would not be consistent with the religious tenets of that organization.

25. The Civil Rights Restoration Act amended Title IX so that insurance coverage of abortion and other such benefits no longer need be provided. However, both the legislative history of the Civil Rights Restoration Act and the Pregnancy Discrimination Act of 1978, covering employees, makes clear that complications of abortion must be covered.

26. Recipients may make employment decisions on the basis of sex provided they can demonstrate that sex is a *bona fide* occupational qualification essential for carrying out job responsibilities. Such actions cannot be based on alleged or stereotyped characterizations of one or the other sex, or preference based on the sex of the recipient, employees, students, or other persons. This does not prevent considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex. [106.61]

27. All institutions covered by Title IX are also covered by Title VII of the Equal Employment Opportunity Act. Title VII requires equal contributions *and* equal benefits; thus it has a stricter standard than Title IX. When one federal law is stricter than another, institutions must conform to the stricter standard. In this instance, institutions must comply with Title VII.

28. Employees are also covered by the Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964. See *The Pregnancy Discrimination Act of 1978 and Its Impact on Educational Institutions* (Washington, DC: AAC/PSEW, 1979).

29. See note 25.

30. Although institutions must have such a procedure, there is no requirement that individuals who believe that they have faced sex discrimination prohibited by Title IX must use this procedure.

31. Parents of elementary- and secondary-school students must also be notified.

32. Additionally, the regulation bars recipients from using or distributing such publications if they suggest, "by text or illustration," that the recipient discriminates on the basis of sex in violation of Title IX [106.9(b)(2)].

33. For example, activities such as participation in educational consortia, cooperative employment, student-teaching assignments, and internships.

34. The regulation requires that participation in these programs be completely voluntary.

35. Public Law 93-568, 88 Stat. 1882. The amendment was introduced by Senator Birch Bayh, the original Senate sponsor of Title IX.

36. Some people maintain that single-sex activities can be conducted under some circumstances for "affirmative action" purposes. Note also that Section 106.39 of the regulation states that, with regard to health services, a recipient is *not* prohibited from providing any benefit or service that may be used by a different proportion of students of one sex than of the other. The same reasoning might hold for programs aimed at persons returning to school and for other services aimed at those who have been out of the workforce. The fact that women might be the predominant users of the service would not constitute a violation of Title IX, provided the program or service was available to both sexes.

37. Public Law 94-482, Title IV, Section 412(a), October 12, 1976, 90 Stat. 2234.

38. "Reasonably comparable" activities do not have to be provided for fatherless males or motherless females. Although such children could be excluded from father-son or mother-daughter events (provided males and females would both be excluded respectively), many schools may want to encourage attendance by such students by allowing them to attend such events alone, with an adult of the same sex, or by making an exception so that the parent of the opposite sex is allowed to accompany the child. However, schools could not treat males with one parent differently from females with one parent; for example, if fatherless males are allowed to attend father-son events, then motherless females would have to be allowed to attend the comparable mother-daughter event. Given the fact that one out of six American children lives with only one parent or neither parent, many schools may want to prevent exclusion or stigmatization of such youngsters. Consequently, schools may choose to sponsor parent-child events instead of father-son or mother-daughter activities.

39. The inclusion of "acts of a foreign government" was included in the regulation to allow the Rhodes scholars program to continue to exclude women. In 1976, the British Parliament voted to allow women to participate in the Rhodes program.

40. See note 37.

41. If only one bathroom is available, it can be used by both sexes as on airplanes and in homes.

42. As stated in note 36, some people maintain that single-sex activities can be conducted under some circumstances for "affirmative action" purposes. Additionally, organizations fall under Title IX jurisdiction if they receive direct federal funding for educational programs.

43. *Federal Register* 40 (June 4, 1975), 24132.

44. See note 36.

45. *Federal Register* 44 (December 11, 1979), 71413-71423.

46. Failure to comply with the financial assistance requirement cannot be counterbalanced by other program factors, and by itself constitutes a violation of Title IX.

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